D.B. CIVIL SPECIAL APPEAL (W) NO.780/2007

Ganesh Lal

Vs.

Chagan Lal & Ors.

23.10.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. P.S. Bhati, for the appellant.

Having heard learned counsel for the appellant, we are satisfied that no case for interference is made out in the order of the learned Single Judge in not interfering with the order passed by the learned Civil Judge (Jr.Div.) and Judicial Magistrate (First Class), Sarada, Distt. Udaipur dated 18.1.2007.

The petitioner moved an application under Section 10 CPC before the learned trial Judge for staying the proceedings in the suit pending before the Civil Judge inter alia on the ground that another proceedings were pending between the parties before the revenue court. The common issue has been raised and the earlier proceedings before the revenue court is still pending. However, the application was not granted by the learned trial court with the finding that the pleading of the earlier proceedings have not been produced before him so as to come to the

conclusion about the commonality of the parties between whom two lis are pending before two separate Courts under two different jurisdiction.

Merely on the basis of assertion made in the application under Section 10 CPC, the application cannot be allowed.

The facts about non-production of pleadings of the earlier proceedings before the trial judge is not in dispute.

We are in agreement with the learned trial judge that in absence of any material about pleadings of two proceedings, between which the comparison is to be drawn about the common issues pending between the same parties, the application under Section 10 CPC cannot be allowed.

Accordingly, the appeal fails and is hereby dismissed.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

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